led her to the Cancer Treatment Centers of America (CTCA), in Zion, Illinois, which was 75 miles from her home in Menomonee Falls, Wisconsin. ''At the CTCA I met doctors and medical personnel who treated me with respect and compassion.''

Advice to others: If you're not getting the answers you want, keep searching. While going to see more than six doctors may seem crazy, it might be necessary, says Lynette. She was not satisfied until she found a place that would treat her the way she wanted to be treated. She decided to go with fractionated-dose chemotherapy (smaller doses of chemo over a greater length of time), which was considered gentler for both her and her unborn baby. ''They also allowed me to refuse antinausea medication and steroids, to avoid exposing my baby to those drugs,'' she says.

Life goes on: Lynette gave birth to a healthy baby boy on August 31, 1998. ''When I held Frankie for the first time, I just thought, We did it!'' Frankie continues to thrive and Lynette has been in remission for eight years now.

CREDIT RATING AGENCY REFORM ACT OF 2006

SPEECH OF

HON. MICHAEL G. FITZPATRICK

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 27, 2006

Mr. FITZPATRICK of Pennsylvania. Mr. Speaker, I would like to extend and revise my remarks made on September 27th regarding S. 3850, the Credit Rating Agency Reform Act of 2006. I submit the attached statement by Brian Carroll in Vol. 232 Number 186 of the Legal Intelligencer.

[From the Legal Intelligencer, Sept. 26, 2005]

ENRON SCANDALS SPUR PROPOSED CREDIT RATING LEGISLATION

(By Brian Carroll)

The regulatory legacy of Enron, WorldCom and other major accounting frauds remains a work in process. Credit rating agencies, such as Moody's Investor Services Inc., Fitch Inc. and the Standard and Poor's Division of the McGraw-Hill Companies Inc. (S&P), issued favorable credit ratings of WorldCom bonds just three months before it declared bankruptcy and, more disturbing, Moody's and S&P favorably opined on Enron bonds four days before its bankruptcy. The unexpected collapse of these issuers cost investors billions of dollars. This raised the question: Why did credit rating agencies issue favorable bond ratings that did not appear to accurately reflect the likelihood of these bankruptcies?

While the Sarbanes-Oxley Act of 2002 fundamentally recast the statutory responsibilities of chief executive and financial officers, audit committees and auditors, it took a different tack when it came to credit rating agencies: Section 702(b) mandated that the Securities and Exchange Commission study the role of credit rating agencies in securities markets. While acknowledging this study, Bucks County Congressman Michael G. Fitzpatrick, R–8th District, has introduced the Credit Rating Agency Duopoly Relief Act of 2005, aimed at increasing competition among credit rating agencies while extending SEC oversight authority. This article reviews the role of credit rating agencies and compares the SEC's approach to credit rating agency regulation with Fitzpatrick's proposed legislation.

CREDIT RATING FIAT

Some credit rating agencies have enjoyed an enviable position. Demand for certain agency services is statutorily guaranteed—no less than dozens of federal, state and foreign government statutes, including securities, banking, higher education finance, and housing and community development statutes, mandate creditworthiness ratings by credit rating agencies that qualify as a 'nationally recognized statistical rating organization' (NRSRO). Innumerable private contracts, such as loan and merger agreements, and more than 20 SEC rules require use of NRSRO services.

NRSRO credit ratings have significant consequences. For example, Rule 2a–7 under the Investment Company Act of 1940 sets a minimum credit rating benchmark for certain money market fund investments. An issuer's failure to meet that benchmark renders the security ineligible for money market investment. Many regulations set mandatory threshold credit rating benchmarks. From an issuer perspective, there is generally an inverse relationship between the credit rating an issuer's debt instrument receives and, the rate of interest the issuer will pay on the borrowing. Finally, institutional and individual investors rely on credit ratings in making investment decisions.

The SEC, through its staff, controls the supply of NRSROs by staff determinations of whether to issue what is called a 'No Action' letter, to provide assurance to a credit rating agency that its ratings can be considered those of an NRSRO without the SEC initiating an enforcement action. The SEC staff began issuing No Action letters in 1975, as part of the agency's efforts to clarify the application of its broker-dealer Net Capital Rule. At present, only three NRSROs have staff No Action letters: Moody's, S&P and Fitch Inc., with the first two capturing nearly 80 percent of the market.

Under this process, a credit rating agency requests the SEC staff conduct an informal inquiry to determine whether the agency is qualified. If satisfied, the SEC staff issues a No Action letter to a credit rating agency, effectively designating it an NRSRO. Once the letter is issued, an NRSRO registers as an adviser pursuant to the Investment Advisers Act of 1940 (Advisers Act).

According to the SEC's Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, as required under Section 702(b) of Sarbanes-Oxley, some NRSROs consider their registration as an adviser to be voluntary. Similarly, other NRSROs assert that Advisers Act requirements to retain and produce to the SEC certain books and records are inapplicable because they operate as journalist under the protection of the First Amendment.

Some support for this position is found in Lowe v. SEC, where the U.S. Supreme Court in 1985 ruled that a publisher of investment materials fell within the Advisers Act exclusion for publishers. In 1999's Jefferson County School District No. R–1 v. Moody's Investor's Services Inc, the 10th U.S. Circuit Court of Appeals held that Moody's was not liable for allegedly materially false bond ratings, based in part on finding that Moody's was functioning as a journalist and therefore entitled to First Amendment protections. Further supporting the NRSROs' argument, in 2004's Compuware Corp. v. Moody's Investors Services Inc., the Eastern District of Michigan held that Moody's qualified for protection from discovery requests under New York's Shield Law. Although the case law in this area is less than settled, there is support for this position.

In addition to potential constitutional protections, the SEC has granted NRSROs relief from potential civil and SEC enforcement liability. For example, Rule 436(g)(1) under the Securities Act of 1933 provides that an NRSRO's credit rating appearing in registration statement is not considered part of the statement for purposes of, among others, Section 11 of the Securities Act, a strict liability provision applicable to experts who participate in preparing a security's registration statement. Violations of this section are commonly alleged in shareholder class action suits. In another vein, SEC Regulation Fair Disclosure excludes credit rating agencies from prohibitions on receiving non-public information from issuers. Although this section covers all credit rating agencies, it most commonly would benefit agencies retained by issuers, i.e. NRSROs.

The SEC has wrestled with the issue of how to define an NRSRO. As early as 1994, the SEC issued a concept release requesting comments on a wide range of NRSRO issues, including how they should be defined. In 1997, the SEC issued a proposed rule that would have defined NRSRO, which was not adopted. In January 2003, the SEC submitted its Section 702(b) report to Congress. In April 2003, the SEC issued another concept release calling for comments on, among other things, how to define an NRSRO. In 2005, the SEC issued another proposed rule reviewing the SEC approach to the issue. It is currently pending.

The current proposed rule would define an NRSRO as a credit rating agency that issues publicly available credit ratings (meaning at no cost) and is generally accepted by financial markets as credible and reliable. Some comments on the proposed rule question whether requiring only free public credit ratings would discourage investors, as opposed to the issuer of the security, from paying for credit rating services. More importantly, the SEC recognizes that some view the 'generally accepted' requirement as creating a 'chicken and egg' barrier to entry where an agency has to first obtain NRSRO-like status before meeting the SEC's definition of an NRSRO.

Given the applicable case law, limitations of the Advisers Act and the No Action letter process, the SEC has questionable authority to conduct any follow-up oversight of NRSROs, such as requiring them to maintain certain books and records, conducting examinations or, when appropriate, instituting enforcement actions. On this issue, former SEC director, division of market regulation, and current Commissioner Annette L. Nazareth testified before Congress that without taking a formal position, '[the] Commission believes that to conduct a rigorous program of NRSRO oversight, more explicit regulatory authority from Congress is necessary.'

PROPOSED FEDERAL LEGISLATION

On June 28, Fitzpatrick addressed the House of Representatives in support of his bill by arguing that two NRSROs currently dominate the ratings market, with SEC approval, which creates 'an uncompetitive marketplace, stifles competition from other rating agencies, lowers the quality of ratings and allows conflicts of interest to go unchecked.' Consistent with this rationale, his Credit Rating Agency Duopoly Relief Act of 2005, H.R. 2990, is designed to achieve two primary objectives: decrease regulatory barriers to credit rating agencies qualifying as an SEC approved statistical rating organization, a new designation to replace NRSRO; and increase SEC statutory authority to oversee approved credit rating agencies.

Under H.R. 2990, a credit rating agency must meet only two requirements to be considered a statistical rating organization and eligible to register with the SEC. First, under the new definition of statistical rating

organization, an agency must have been in the business of primarily issuing publicly available ratings at least for the most recent three consecutive years. Here, 'publicly available' is defined as certain ratings disseminated via the Internet for free or a fee. This provision permits both issuer and investor financed ratings to qualify.

Second, H.R. 2990 requires that an agency employ either a quantitative or qualitative model in determining its publicly available ratings. This provision permits agencies that rely on purely analytic measures for determining a credit rating, as opposed to interviews with the issuer's senior management. Notably, there is no 'generally accepted by the financial markets' component to this definition, eliminating the 'chicken and egg' barrier.

Fitzpatrick's bill would amend Section 15 of the Exchange Act by creating a public registration procedure for becoming a statistical rating organization. As part of the procedure, an eligible agency must disclose how it handles potential conflicts of interest and misuse of non-public information, as well its methodologies for determining credit ratings. If denied, the agency could appeal the SEC's decision to the circuit courts.

Under H.R. 2990, a registered statistical rating organization must also maintain policies and procedures aimed at preventing conflicts of interest, anticompetitive practices and misuse of nonpublic information. Recent events underscore the importance of these continuing requirements. For example, the report describes one anti-competitive practice known as notching—refusing to rate or lowering the rating of some securities unless the issuer permits the agency to rate other securities. Also, the report notes concerns over agency pressure on issuers to purchase other agency services, presumably to stay in its good graces. Finally, in SEC v. Marano, et al, the SEC alleged that employees of S&P's Financial Rating Services violated Section 10(b) of the Exchange Act and Rule 10b–5 by engaging in insider trading on material nonpublic information obtained through employment at S&P.

Perhaps most important, Fitzpatrick's bill would provide the SEC with statutory authority under the Exchange Act to require statistical rating organizations to maintain certain books and records, conduct examinations and, when appropriate, institute enforcement actions against the SRO itself. This type of SEC oversight already applies to brokers, dealers, municipal securities dealers, transfer agents and clearing agents under existing provisions of the Exchange Act. Consistent with this requirement to register under the Exchange Act, H.R. 2990 prohibits a statistical rating organization from registering as investment adviser and reliance on existing No Action letters concerning NRSROs.

CONCLUSION

In light of the history of this issue, H.R. 2990 would, if enacted, go a long way toward strengthening the SEC's authority to oversee this key area of our securities regulation scheme while reducing the SEC's role in deciding who is qualified to perform credit ratings. With this legislation, the SEC would be in a better position to challenge industry assertions of constitutional protection. Some of these legal questions may be resolved sooner, for a recent newspaper article reports that New York Attorney General Eliot Spitzer has subpoenaed credit rating documents from Moody's as part of an investigation into insurance industry practices.

Brian Carroll is a CPA and Special Counsel to the U.S. Securities and Exchange Commission in the Philadelphia District Office. The U.S. Securities and Exchange Commission disclaims responsibility for any private publication or statement of any Commission employee or Commissioner. This article expresses the author's view and does not necessarily reflect those of the Commission, the Commissioners or other members of the staff.

THE CONGRESS ON WORLD AND TRADITIONAL RELIGIONS

HON. ROBERT B. ADERHOLT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Mr. ADERHOLT. Mr. Speaker, I commend President Nursultan Nazarbayev for his vision and commitment that made possible the recent Congress on World and Traditional Religions. It was a historic event. The remarks recently by Pope Benedict XVI, quoting medieval text, and the fierce reaction in the Islamic world underscore the need for an open and candid discussion, as occurred in Astana.

At this year's forum, there were 43 delegations from 20 countries, including 43 representatives of Islam, Judáism, Christianity, Buddhism, and other distinguished leaders. Though not all religious viewpoints may have been represented, the gathering had an impressive roster of participants—notably UNESCO Secretary General Koichiro Matsuura, United Nations Deputy Secretary General Sergei Ordjonikidze, particpated as well as NGOs dedicated to religious freedom issues. Cardinal Theodore Edgar McCarrick, past Archbishop of Washington, D.C. was among the delegates attending the event from the United States.

The Second Congress on World and Traditional Religions convened at a time when the world is beset with conflict, regrettably much of it rooted in religious strife.

At some point, religious leaders, and the governments who represent them, must rise above their differences, be they ethnic, cultural, geographic, religious, by seeking God's will as the best means of achieving peace and reconciliation in the world. And make no mistake, seeking common ground and mutual respect should not be viewed as a license for censure of thought or speech. Every human being has an inalienable right granted by God to believe as he or she chooses and to freely express that belief, whether as an act of worship or persuasion. Our common ground becomes soggy if we lose the ability to advocate for our viewpoint, while making sure we give due respect and deference to the viewpoints of others.

President Nazarbayev, who is in Washington, D.C. this week at the personal invitation of President George Bush, and Speaker Nurtray Abikayev, Chairman of the Secretariat of the Congress, are to be commended for organizing this very important event.

Mr. Speaker, though we may all have different ways to express or define what freedom of religious expression and worship means, we all agree that each individual must have the right to worship freely without intrusion of the government. Therefore, I commend gatherings such as the one that took place in Astana, Kazakhstan earlier this month, and I commend the country of Kazakhstan for hosting this event and believe many worthwhile and much needed issues were raised and discussed.

I would also like to have included in my remarks the text of the Declaration of the II Congress of Leaders of World and Traditional Religions.

DECLARATION OF THE II CONGRESS OF LEADERS OF WORLD AND TRADITIONAL RELIGIONS

We, the leaders of world and traditional religions, gathered at our Second Congress in Astana, the capital of Kazakhstan:

Building on the success of the First Congress, which took place in the city of Astana on 23–24 September 2003 and engaged internationally recognized world religious leaders in an important initiative of inter-religious dialogue; wishing to help strengthen mutual understanding between cultures, religions and ethnic groups which form the basic components of world civilizations, and aiming to prevent conflicts based on cultural and religious differences; acknowledging that religion, having always been a fundamental element of human life and society has, at the beginning of the new century, assumed a significant new role in establishing and preserving peace; recognizing the great responsibility held by religious leaders for spiritual teaching and advocacy on behalf of current and future generations, and their vital role in establishing a spirit of mutual respect, understanding and acceptance in the face of new challenges; underlining the unique character of every religion and culture, and considering cultural and religious diversity to be an important feature of human society; expressing concern about increasing inter-religious and interethnic tensions in the world deriving from the exploitation of religious and national differences as a justification for violence which causes suffering to innocent victims; stressing that extremism and fanaticism find no justification in a genuine understanding of religion and that the vocation of all religions demands the refusal of violence and appeals to respect and peaceful coexistence with peoples and religions; believing that the difficulties in inter-religious and intercultural relations are related both to a fundamental imbalance in international politics, economics, social, humanitarian and information resources, and to the manipulation of religion for political ends; discussing and debating the above-mentioned concerns within the main theme of the Congress—''Religion, society and international security'' in the context of two special blocs.

I. ''Freedom of religion and recognition of others'';

II. ''Role of religious leaders in enhancing international security''

Appeal to people of all religions and people of good will across the globe, and:

Call upon them to abandon enmity, discord and hatred; and embrace common respect and generosity, recognizing the reality of cultural, religious and civilizational diversity; declare our determination together to tackle and ultimately eliminate prejudice, ignorance and misrepresentation of other religions by placing particular focus on what religions hold in common as well as what distinguishes them; condemn all forms of terrorism on the basis that justice can never be established through fear and bloodshed and that the use of such means in the name of religion is a violation and betrayal of any religion that appeals to human goodness and dialogue; reject all false inventions and wrongly created stereotypes about the violent nature of religions and attempts to attribute terrorism to any particular religion; call upon all to work together to address and eliminate all causes of terrorism, thus promoting human flourishing, dignity and unity; declare our rejection of any form of pressure or violence to convert followers of one religion to another; reaffirm the pivotal role of education, youth policy and cultural